

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

DANIEL KANNEGAARD JR,

Appellant,

v.

WASHINGTON STATE UNIVERSITY,

Respondent.

) Case No. SUSP-00-0042

)
) FINDINGS OF FACT, CONCLUSIONS OF
) LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** Pursuant to RCW 41.64.060 and WAC 358-01-040, this appeal came on for hearing before the Personnel Appeals Board, GERALD L. MORGEN, Vice Chair. The hearing was held at the Compton Union Building at Washington State University, Pullman, Washington on April 2, 2002. RENÉ EWING, member, reviewed the record and participated in the decision in this matter. WALTER HUBBARD, Chair, did not participate in the hearing or in the decision in this matter.

1.2 **Appearances.** Appellant Daniel Kannegaard Jr. was present and was represented by Edward Earl Younglove III, Attorney at Law, of Parr and Younglove, P.L.L.C. Donna Stambaugh, Assistant Attorney General, represented Respondent Washington State University.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of a five-day suspension without pay for employee abuse, neglect of duty, inefficiency, use of offensive language, gross misconduct and insubordination. Respondent asserts that Appellant shoved a student worker,

1 directed offensive language toward student workers and staff and was not available while assigned
2 home on administrative leave.

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4 1.4 Citations Discussed. WAC 358-30-170; WAC 251-12-240(1); Baker v. Dep't of
5 Corrections, PAB No. D82-084 (1983); Johnson v. Lower Columbia College, PAB No. D93-077
6 (1994); McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987); Anane v.
7 Human Rights Commission, PAB No. D94-022 (1995), *appeal dismissed*, 95-2-04019-2 (Thurston
8 Co. Super. Ct. Jan. 10, 1997); Countryman v. Dep't of Social & Health Services, PAB No. D94-025
9 (1995); Rainwater v. School for the Deaf, PAB No. D89-004 (1989).

10 11 II. FINDINGS OF FACT

12 2.1 Appellant Daniel C. Kannegaard Jr. was a Food Service Worker Lead and permanent
13 employee for Respondent Washington State University. Appellant and Respondent are subject to
14 Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 251 and 358 WAC.
15 Appellant filed a timely appeal with the Personnel Appeals Board on November 8, 2000.

16
17 2.2 By letter dated October 20, 2000, Tim McCarty, Director of the Compton Union Building,
18 informed Appellant that he was suspended without pay for a period of five days effective October
19 23, 2000 through October 27, 2000. Mr. McCarty charged Appellant with employee abuse, neglect
20 of duty, inefficiency, use of offensive language, gross misconduct and insubordination. Mr.
21 McCarty alleged that Appellant directed profanity at and forcefully grabbed student worker Chris
22 Farmer; told student worker Eli Ghorley, "Get out of my face, you little fuck"; told his supervisor,
23 Chris Kenney, "this is a bunch of shit" and dumped a tub of dirty water in his direction, splashing
24 Mr. Kenney in the face; and failed to be available on October 5, 6 and 9, 2000 while on
25 administrative assignment to his home.

1 2.3 Appellant began his employment with Washington State University as a Food Service
2 Worker Lead in June 1995. Appellant worked in the Food Services Department in the Compton
3 Union Building. Appellant was responsible for the dish room, and he directed the work of others,
4 including several student worker. Appellant has not been the subject of any prior formal
5 disciplinary action. A letter of reprimand was issued to Appellant on April 7, 2000. The signature
6 line contains three names: Yves LaTouche, Appellant's former supervisor; Eric Webb, Assistant
7 Food Services Manager; and Chris Kenney, Executive Chef. The letter was signed by Mr.
8 LaTouche and was stored in Appellant's "department file" located in the Compton Union Building.
9 However, the Human Resources Office, which houses the personnel files for WSU employees, did
10 not receive a copy of the letter until October 4, 2000.

11
12 2.4 Both Mr. Webb and Mr. Kenney testified that they did not recall serving Appellant with the
13 letter. Mr. LaTouche was not called to testify. Appellant testified that he did not receive the letter
14 and that he did not have knowledge of its existence until 2001 when he reviewed his personnel file
15 in the Human Resources Office. A preponderance of the evidence did not substantiate that
16 Appellant was properly served with the letter of reprimand.

17
18 2.5 Appellant had concerns about the role of student workers, and he believed that student
19 workers in the dish area should follow his directives, regardless of whether he was assigned
20 leadworker/supervisory responsibilities over them. On September 20, 2000, Appellant gave student
21 worker Chris Farmer a directive. Mr. Farmer, who bussed dishes, was not assigned to work in the
22 dish room nor was Appellant his leadworker. Because Mr. Farmer had questions regarding
23 previous directives he had received from Appellant, he had confirmed with his own lead worker that
24 he did not have to perform duties outside of his work area. Mr. Farmer responded to Appellant that
25 he would not perform the task because it was not his job.

1 2.6 Appellant became angry at Mr. Farmer's refusal to follow his directive. Mr. Farmer
2 testified that Appellant became argumentative, used profanity toward him, and "got in my face and
3 shoved me." Mr. Farmer found Appellant's behavior threatening, and he reported the incident to
4 his supervisor. Appellant testified that he tapped Mr. Farmer's shoulder to get his attention and he
5 denies that he shoved him. We find that Mr. Farmer is more credible and had no motive to falsely
6 claim that Appellant used profanity and became physically aggressive with him.

7
8 2.7 On September 22, 2000, student worker Eli Ghorley was bussing dishes for several catered
9 events. Mr. Ghorley entered the dish room with a tub of dirty dishes and water glasses when
10 Appellant directed him to unload the dish washer. Mr. Ghorley, who was not under Appellant's
11 supervision, told Appellant that he had two other events he was clearing dishes for and that he did
12 not have time to unload the washer. Appellant and Mr. Ghorley engaged in an argument about
13 whether Mr. Ghorley was required to assist Appellant. Appellant admits that he told Mr. Ghorley,
14 "Get out of my face" and "if you want a piece of me, clock out and step outside." Both Appellant
15 and Mr. Ghorley used profanity during the exchange.

16
17 2.8 On October 2, 2000, Appellant arrived to work and became upset after he discovered a large
18 number of dirty dishes left over from the weekend. Appellant spent approximately four hours
19 working to get the dishes finished when student worker Chris Farmer walked into the area with an
20 additional tub of dirty dishes. Appellant directed Mr. Farmer to unload the washer. Mr. Farmer
21 stated it was not his job. Both Appellant and Mr. Farmer became confrontational and started
22 yelling. Mr. Farmer responded that unloading the washer was not his responsibility and he walked
23 away.

24
25 2.9 Executive Chef Chris Kenney was Appellant's supervisor. Mr. Kenney overheard the
26 exchange between Appellant and Mr. Farmer from his office. Mr. Kenney approached to intervene.

1 Appellant stated to Mr. Kenney, "This is bullshit." Mr. Kenney asked Appellant if he was refusing
2 to do his job. Appellant told Mr. Kenney that he should not have to do all the dishes without
3 assistance from others and he again repeated, "This is bullshit." Appellant angrily overturned the
4 tub of dishes into the sink, which caused water to spill onto Mr. Kenney clothes and face. Although
5 Appellant's actions were forceful, a preponderance of the evidence did not substantiate that
6 Appellant intended to splash water on Mr. Kenney.

7
8 2.10 The incidents were subsequently reported to Tim McCarty, Director of the Compton Union
9 Building, who initiated an investigation and placed Appellant on administrative home assignment.
10 Mr. McCarty's October 4, 2000 memo read, "You are required to make yourself available to your
11 supervisor, Chris Kenney, during regular working hours, but you should not report to work on
12 campus at WSU. Chris Kenney will contact you at home to verify your availability for work."

13
14 2.11 On October 5, 6, and 9, 2000, Mr. Kenney initiated numerous phone calls to Appellant's
15 home. Mr. Kenney placed the calls using a speakerphone and he asked two other employees, Eric
16 Webb and Kevin Ketchie, to witness the calls. On one occasion, Appellant's son stated that
17 Appellant was not home and on several other occasions, the phone line was busy. Appellant
18 testified that he was at home working in his garage the day his son answered the phone and that his
19 family members were using the phone when the line sounded busy. A preponderance of the
20 evidence did not establish that Appellant was away from his home on October 5, 6 or 9 or that he
21 violated Mr. McCarty's October 4, 2000 memorandum.

22
23 2.12 Mr. McCarty was Appellant's appointing authority when the discipline was imposed. Mr.
24 McCarty reviewed the complaints regarding Appellant's behavior as well as a written statement
25 from Appellant describing his version of the events. Mr. McCarty concluded that Appellant
26 exhibited a pattern of abusive behavior toward coworkers and created a work environment where

1 employees felt afraid. Mr. McCarty believed that Appellant's behavior created an inefficient and
2 intolerable work environment for others. Mr. McCarty felt that Appellant had received prior notice
3 in the April 7, 2000 memo that his behavior was not appropriate but that he failed to modify his
4 behavior. Mr. McCarty determined that Appellant's misconduct, especially pushing another
5 employee, required a more severe penalty. Mr. McCarty ultimately concluded that a five-day
6 suspension without pay was the appropriate discipline.

8 **III. ARGUMENTS OF THE PARTIES**

9 3.1 Respondent argues that Appellant displayed abusive behavior and directed profanity at his
10 coworkers. Respondent asserts that Appellant was also argumentative with and showed disrespect
11 toward his supervisor. Respondent asserts that Appellant was not just using profanity in the
12 workplace, but was directing profanity at others. Respondent argues that Appellant's
13 confrontational behavior was inappropriate, that the incidents were not isolated, and that Appellant
14 had received prior warning regarding his inappropriate behavior toward coworkers. Respondent
15 asserts that Appellant had received prior notice about his inappropriate behavior, that he failed to
16 modify his behavior and to take responsibility for his actions, and instead continued to focus the
17 blame on others. Respondent argues that the department has a responsibility to provide its
18 employees with an environment free from abuse and that the incidents were serious and could not
19 be tolerated. Respondent argues that a five-day suspension was appropriate and should be affirmed.

20
21 3.2 Appellant asserts that Chris Farmer's testimony has been inconsistent and has changed from
22 a shove to being grabbed. Appellant argues, however, that his version of the events has been
23 consistent and is more credible. Appellant argues that it was appropriate for him to direct the work
24 of all student workers in the kitchen, even if they were not assigned directly under him. Appellant
25 denies that he intentionally splashed Mr. Kenny and he further asserts there was no evidence to
26 substantiate that he was not home or unavailable to his employer when the calls to his home were

1 made. Appellant argues that the letter of reprimand should not be considered part of progressive
2 discipline because he never received it, which is supported by its placement in his personnel file in
3 October 4, 2000. Appellant argues that Respondent failed to prove the charges by a preponderance
4 of the evidence and he asserts the suspension should be reversed.

6 IV. CONCLUSIONS OF LAW

7 4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter
8 herein.

9
10 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting
11 the charges upon which the action was initiated by proving by a preponderance of the credible
12 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the
13 sanction was appropriate under the facts and circumstances. WAC 358-30-170; WAC 251-12-
14 240(1); Baker v. Dep't of Corrections, PAB No. D82-084 (1983).

15
16 4.3 Abuse of fellow employees is established when it is shown that the employee wrongfully or
17 unreasonably treats another by word or deed. Johnson v. Lower Columbia College, PAB No. D93-
18 077 (1994).

19
20 4.4 Neglect of duty is established when it is shown that an employee has a duty to his or her
21 employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't
22 of Social & Health Services, PAB No. D86-119 (1987).

23
24 4.5 Inefficiency is the utilization of time and resources in an unproductive manner, the
25 ineffective use of time and resources, the wasteful use of time, energy, or materials, or the lack of
26 effective operations as measured by a comparison of production with use of resources, using some

1 objective criteria. Anane v. Human Rights Commission, PAB No. D94-022 (1995), *appeal*
2 *dismissed*, 95-2-04019-2 (Thurston Co. Super. Ct. Jan. 10, 1997).

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4 4.6 Insubordination is the refusal to comply with a lawful order or directive given by a superior
5 and is defined as not submitting to authority, willful disrespect, or disobedience. Countryman v.
6 Dep't of Social & Health Services, PAB No. D94-025 (1995).

7
8 4.7 Gross misconduct is flagrant misbehavior which adversely affects the agency's ability to
9 carry out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989).

10
11 4.8 Respondent has proven by a preponderance of the credible evidence that Appellant
12 neglected his duty when he displayed outbursts of anger and used profanity toward Chris Farmer
13 and Eli Ghorley. Appellant also invaded Mr. Farmer's personal space when he had physical contact
14 with Mr. Farmer during an angry confrontation. Appellant's inappropriate displays of anger were
15 unreasonable and constitute mistreatment of a coworker. In his role as a lead worker, Appellant had
16 a responsibility to act professionally and to model appropriate and acceptable behavior for other
17 employees. Respondent has proven by a preponderance of the evidence that Appellant failed to use
18 good judgment, to conduct himself appropriately and to treat his fellow employees with dignity and
19 respect. Furthermore, Appellant's misconduct interfered with the University's ability to provide a
20 safe and secure work environment for its employees and rises to the level of gross misconduct.
21 Respondent has not proven by a preponderance of the evidence that Appellant's misconduct resulted
22 in an inefficient use of work time or that he failed to comply with Mr. McCarty's administrative
23 reassignment memorandum.

24
25 4.9 When undertaking a disciplinary action, an appointing authority must impose a sanction
26 which has the desired effect on the employee, for example, modifying or stopping the inappropriate

1 behavior, without imposing a sanction which is too severe. When Mr. McCarty leveled a five-day
2 suspension against Appellant, he considered the April 7, 2000 letter of reprimand as prior warning
3 to Appellant. In our review of whether a sanction is appropriate, we continue to hold that it is
4 appropriate to consider formal and informal disciplinary actions, including letters of reprimand
5 regarding the level of a sanction imposed by an appointing authority. (Aquino v. University of
6 Washington, PAB No. D93-163 (1995). However, we will give no weight to the April 7, 2000
7 letter based on the department's failure to ensure that Appellant received the letter of reprimand and
8 the untimely placement of the letter in Appellant's human resource personnel file six months after it
9 was dated and seemingly only after the incidents occurred which resulted in this appeal.

10
11 4.10 While Respondent has failed to meet its burden of proof with respect to several of the
12 allegations, Appellant's behavior toward Mr. Farmer and Mr. Ghorley was, nonetheless, clearly
13 unprofessional, inappropriate and unwarranted. Therefore, we conclude that a five-day suspension
14 is too severe and that three-day suspension without pay is sufficient to impress on Appellant the
15 importance of modifying his behavior in the workplace.

16 **V. ORDER**

17 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Daniel Kannegaard Jr. is
18 granted in part and is modified to a three-day suspension without pay.
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20 DATED this _____ day of _____, 2002.

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22 WASHINGTON STATE PERSONNEL APPEALS BOARD

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24 _____
Gerald L. Morgen, Vice Chair

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26 _____
René Ewing, Member

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